Supreme Court, U.S.
FILED
95-52 MAY 31 1995
OFFICE OF THE CLERK

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

BARBARA JOHNS

Petitioner,

vs.

WARE COUNTY BOARD OF COMMISSIONERS
and
GAB BUSINESS SERVICES, INC.

Respondents,

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES SUPREME COURT FROM THE SUPERIOR COURT OF WARE COUNTY, GEORGIA

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Is it arbitrary and irrational to distinguish between psychological injuries preceded by physical injury or injuries which are purely physical and psychological injuries not preceded by a physical injury and therefore a violation of due process?

(2) Is it a violation of equal protection to deny benefits to a class of claimants whose mental injuries are not accompanied by a physical injury while awarding benefits to a class of claimants whose injuries are either physical or who have the same mental impairments but with a physical injury accompanying them?

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Petitioner, BARBARA JOHNS, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Supreme Court of the State of Georgia in refusing a discretionary appeal and the court below, who ruled that in Georgia purely psychological injuries caused by the job are not compensable as an occupational disease or illness or as an accidental injury or otherwise under the Workers' Compensation laws for the State of Georgia.

OPINIONS BELOW

The opinion of the Supreme Court of the State of Georgia has refused discretionary appeal to hear this case. The Order refusing to hear this appeal is attached as Appendix A to this Petition. The Order of the Superior Court of Ware County, Georgia, affirming the opinion of the Full Board of the Workers'

Compensation Board for the State of Georgia, which affirmed the opinion of the Administrative Law Judge are also attached as Appendix B and Appendix C to this Petition. The opinion of the Administrative Law Judge is attached as Appendix D. These opinions are unpublished. The Supreme Court of the State of Georgia issued an order on March 9, 1995, refusing the application of Barbara Johns for discretionary appeal.

JURISDICTION

This court's jurisdiction is invoked under Title 28 U.S.C. Section 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Amendment XIV to the United States Constitution is set forth in Appendix E.

STATEMENT OF THE CASE

This is an appeal from a decision of the Workers' Compensation Court for the State of Georgia, which ruled that claims for psychological injuries or illnesses caused by mental stress at the workplace are not compensable unless caused by a or accompanied with a discernible physical occurrence. The Administrative Law Judge merely held that the class of people in Georgia who are injured in the workplace by physical injury followed by a psychological injury or illness may receive Workers' Compensation. Those who have purely physical injuries may receive compensation, while those who suffer debilitating psychological injuries because of the stress from the workplace may not receive compensation in the State of Georgia, either under case law as an accidental injury arising out of the job

or as an occupational illness. See generally O.C.G.A. Section 34-9-1(4); Owens-Illinois, Inc. v. Douglas, 151 Ga. App. 408; 260 S.E.2d 509 (1979); and O.C.G.A. Section 34-9-280.

The Full Board of the State Board of Workers' Compensation Court for the State of Georgia upheld this decision as did the Superior Court of Ware County, Georgia. The Supreme Court for the State of Georgia denied discretionary appeal.

REASONS FOR GRANTING THE WRIT

Certiorari should granted in this case, because different states have different rules about these issues, (See 97 ALR 3d 161) and this case presents questions whose resolutions will have immediate importance far beyond the particular facts and parties involved in this case. The case of Barbara Johns involves extremely important principles,

which affect the plans, hopes, and lives of a great many people throughout our nation. Psychology, or the study and science of the mind, is no longer at such a primitive stage that it must be ignored. Stress is being linked to many physical and psychological illnesses as more and more is learned about stress and how it affects the human body. It is absolutely ridiculous to treat a class of people who receive a physical injury on the job or a mental injury accompanied with a physical injury in a favorable manner and to deny Workers' Compensation coverage to a class of people who, because of stress on the job, suffer a psychological injury. This distinction is made upon antiquated reasoning and misunderstanding of emotional and mental trauma. These distinctions are arbitrary and irrational. This distinction denies due process to claimants who suffer mental damages caused by psychic injuries or stress on the job.

If there is not a fair and substantial relationship between the classification and a purpose of law, then the classification must be arbitrary and unreasonable and must be stricken. Reed v. Reed, 404 U.S. 71 (1971).

CONCLUSION

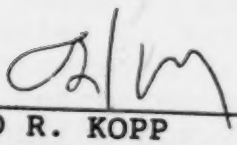
Therefore, the Petitioner, BARBARA JOHNS, states a very compelling case for granting her Writ of Certiorari. This distinction no longer serves the purpose for which it was created. Certainly, it can be no more difficult to diagnose a malingering Claimant who claims to have a back injury than it would be a malingering Claimant who claims to have a psychological injury. The law, as it currently exists, makes no sense. Moreover, there seems to be about an even split between the states who follow this antiquated reasoning with states which

treat psychological injuries as compensable.

WHEREFORE, the Petitioner, BARBARA JOHNS, shows that her Writ should be granted, and this matter should be heard.

Respectfully submitted,

FRED R. KOPP, P.C.



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Attorney for Petitioner
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a true and correct copy of the attached and foregoing **PETITION FOR WRIT OF CERTIORARI** with attached Appendices upon:

Ms. Julie Y. John
Mr. Daniel C. Kniffen
Attorneys at Law
880 W. Peachtree Street
Post Office Box 7600
Atlanta, Georgia 30357-7600

by mailing same to them by United States Mail, in a properly addressed envelope, with sufficient postage affixed thereto.

This 25 day of May, 1995.

FRED R. KOPP

APPENDIX A

SUPREME COURT OF GEORGIA

Case No. S95D0772 Atlanta, March 9, 1995

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

BARBARA JOHNS V. WARE COUNTY BOARD OF COMMISSIONERS et al.

From the Superior Court of WARE County.

Upon consideration of this Application for Discretionary Appeal, it is ordered that it is hereby denied.

ALL the Justices concur.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court hereto affixed the day and year last above written.

_____

Chief Deputy Clerk

SEAL

APPENDIX B

IN THE SUPERIOR COURT OF WARE COUNTY
STATE OF GEORGIA

Barbara P. Johns, Claimant,	)	CIVIL ACTION FILE NO. 94-V-1144
vs.	)	CLAIM #264-56-4359
Ware County Board of Commissioners, Employer/Self-Insurer, and GAB Business Services, Inc., Servicing Agent.	)	D/A: 09/12/93

ORDER

The above-styled action, having come before this Court, and after reviewing the transcript of proceedings before the State Board of Workers' Compensation and briefs submitted by both parties, this Court finds that there is evidence to substantiate the findings and decisions of the State Board of Workers' Compensation dated December 6, 1994 and that decision does not comply with the law and should be affirmed.

Therefore, it is hereby ordered that the Award of the State Board of Workers' Compensation dated December 6, 1994 is hereby affirmed.

IT IS SO ORDERED, this ____ day of _____, 1995.

s/JOSEPH B. NEWTON
JUDGE, SUPERIOR COURT OF
WARE COUNTY

APPENDIX C

STATE BOARD OF WORKERS' COMPENSATION
Suite 1000, South Tower
One CNN Center
Atlanta, Georgia 30303-2788

Claim #264-56-4359 Case of: Barbara P. Johns
DOA: 09/12/93 Date: 12/06/94

Barbara P. Johns 1560 Connors Road Waycross, GA 31503	Employee/Claimant
Ware County Board of Commissioners P. O. Box 1069 Waycross, GA 31502	Employer/Self-Insurer
Association of County Commissioners of Georgia c/o GAB Business Services, Incorporated P. O. Box 81788 Atlanta, GA 30366	Servicing Agent
Fred R. Kopp P. O. Box 785 Alma, GA 31510	Counsel for Employee
Julie Y. John P. O. Box 7600 Atlanta, GA 30357-0600	Counsel for Employer/ Self-Insurer

This claim is before the Appellate Division for review of the award of Judge Bohler of the Trial Division, dated July 29, 1994.

Upon de novo consideration of all evidence,

the Appellate Division makes the findings and conclusions of the administrative law judge its findings of fact and conclusion of law.

AWARD

The award of Judge Bohler, dated July 29, 1994, is made the award of the Appellate Division.

IT IS SO ORDERED, this the 6th day of December, 1994.

Concurring: Judge Don L. Knowles and Judge M. Yvette Miller

STATE BOARD OF WORKERS' COMPENSATION

_____

HARRILL L. DAWKINS
Presiding Judge
Appellate Division

STATE BOARD OF WORKERS' COMPENSATION
Suite 1000, South Tower
One CNN Center
Atlanta, Georgia 30303-2788

Claim #264-56-4359 Case of: Barbara P. Johns
DOA: 09/12/93 Date: 07/29/94

Barbara P. Johns 1560 Connors Road Waycross, GA 31503	Employee/Claimant
Ware County Board of Commissioners P. O. Box 1069 Waycross, GA 31502	Employer/Self-Insurer
Association of County Commissioners of Georgia c/o GAB Business Services, Incorporated P. O. Box 81788 Atlanta, GA 30366	Servicing Agent
Fred R. Kopp P. O. Box 785 Alma, GA 31510	Counsel for Employee
Daniel C. Kniffen Julie Y. John P. O. Box 7600 Atlanta, GA 30357-0600	Counsel for Employer Self-Insurer

This claim was scheduled for hearing on April 11, 1994. The parties agreed to submit stipulated facts and briefs for the administrative law judge to determine whether

the employee's claim for psychological injuries which were not precipitated by a physical injury were compensable as (1) an injury arising out of and in the course of employment or (2) an occupational disease. The parties stipulate to the following:

STIPULATED FACTS

1. The parties agree that jurisdiction and venue are proper, the employee was in the general employ of the employer/self-insurer on September 12, 1993, the parties are subject to the Workers' Compensation Act, and the correct average weekly wage is $310.00.

2. The employee began working for Ware County as a 911 dispatcher in December, 1988.

3. The employee is one of two 911 operators per shift. During the course of her employment with Ware County, her shift has varied from working the midnight shift to the day shift.

4. On September 12, 1993 when the employee

reported to work, she learned that there had been a change in her schedule for the following date. The employee became very upset, contacted her supervisor, Sergeant Cooper, and immediately left work. The employee did not sustain any physical injury on September 12, 1993 or anytime prior to that date while on the job.

5. On September 13, 1993, the employee went to her personal physician at Waycross Family Practice complaining of nervousness and stress at the job.

6. The employee was referred to Satilla Park Hospital on September 18, 1993 and continued to obtain follow-up care on an out-patient basis with Dr. Green. Dr. Green ultimately released the employee to return to her normal work duty as a 911 operator on October 26, 1993. The employee did return to work on that date, performing her regular duties as a 911 operator, and has continued to perform her

work without missing any time.

8. The employee requested a hearing on November 3, 1993 claiming indemnity benefits from September 12, 1993 through October 26, 1993, payment of medical bills to Satilla Park Hospital and Dr. Patricia Green, and assessed attorney's fees, alleging "no workers compensation benefits were provided, although it is obvious that this was an on-job occupational injury resulting from stress of the job."

9. The employee contends that the constant schedule changes with her job on a last-minute basis caused extreme stress, particularly since she was unable to make any plans. The employee contends that the job of a 911 operator is stressful; however, she admits that the scheduling aspect of the job caused the most stress and that making quick decisions did not necessarily affect her.

10. The parties agree that the employee did

not sustain any physical injury on September 12, 1993 or while working for the employer/self-insurer. Instead, the employee's entire claim is for the payment of benefits and medical expenses relating to a psychological injury resulting from stress on the job.

11. The employer/self-insurer has controverted this claim on the basis that the employee did not sustain any physical injury associated with her psychological claim.

12. All medical records of Waycross Family Practice Center, Satilla Park Hospital and Dr. Patricia Green were submitted into evidence by agreement as Joint Exhibits 1, 2 and 3, respectively, and the deposition of the employee was submitted in to evidence as Joint Exhibit 4.

The issue to be determined is whether the employee's disability from September 13, 1993 to October 26, 1993 for major depression and

nervousness and the medical bills incurred as a result of her major depression and nervousness are compensable either as injury by accident arising out of and in the course of employment or as an occupational disease. Based upon the facts as stipulated by the parties, the deposition and the medical records submitted and after consideration of the briefs by counsel and the existing statutory and case law, I make the following findings and conclusions:

CONCLUSIONS

1. The current law in this state holds that a claim for mental stress is not compensable unless it was caused by a "discernible physical occurrence". Hanson Buick V. Chatham, 163 Ga. App. 127, 292 SE2d 428 (1982) and W. W. Fowler Oil Company V. Hamby, 192 Ga. App. 422, 385 SE2d 106 (1989). The parties have stipulated that the employee did not suffer any physical injury and that her claims

are purely psychological. Therefore, under Georgia law, the employee has not suffered an injury by accident arising out of and in the course of her employment and her claim is barred.

2. I further find that the employee's depression and nervousness are not compensable as an occupational disease because her condition does not meet the requirements of O.C.G.A. 34-9-280. Specifically, depression and nervousness is "an ordinary disease of life to which the general public is exposed" which excludes it from the occupational disease statute. O.C.G.A. 34-9-280(c).

3. The employee argues that the time has come for a change in law and raises several constitutional challenges to the current Georgia law. This judge cannot ignore the statutory and case law in this state nor find that law unconstitutional. Decisions as to constitutionality are for higher courts to

determine. This court is bound by the current law in this state which holds that this claim for psychological injury without a physical injury cannot be compensable.

AWARD

Based upon the foregoing stipulated facts and conclusions of law, the employee's claim for workers' compensation benefits is hereby denied.

IT IS SO ORDERED, this July 29, 1994

STATE BOARD OF WORKERS' COMPENSATION

LEESA A. BOHLER
Administrative Law Judge

You have the right to appeal an award of an administrative law judge within 20 days of the date of that award. If you wish to do so, you must send a written notice of appeal to:

State Board of Workers' Compensation
Suite 1000-South Tower, One CNN Center
Atlanta, GA 30303-2788

The part of Board Rule 103 which contains the proper procedure for an appeal is as follows:

(a) The time for application for review commences on the date shown on the notice of award and is computed as in paragraph (3) of subsection (d) of O.C.G.A. 1-3-1.

(b) Appearance before the three-member board shall be by brief only unless a request for oral argument is made at the time the application for review is filed. Within 10 days from the date of the certificate of service on the application for review, the appellee may request oral argument. Where oral

argument has been requested, all parties may appear for oral argument. Oral argument shall be limited to five minutes for each party.

(1) The party applying for review shall serve a copy of the application for review upon all opposing parties. The party requesting review shall have 20 days from the date shown on the certificate of service of the application for review in which to file a brief along with three copies of the award of the administrative law judge. The party requesting the review shall certify that a copy of the brief was served in person or by mail to all opposing parties on the date the brief is submitted to the board. Opposing parties shall then have 20 days from the date of appellant's certificate of service to file reply briefs with the

board. Briefs not filed in conformity with this rule will not be accepted except by permission of the board. Upon application for oral argument, the party making the application shall file with the board six copies of the award of the administrative law judge, including all amendments, for which the review is requested. The case will not be scheduled on a calendar unless these copies are enclosed.

(2) Briefs shall generally follow the format required by the appellate courts. Only the original of the brief is required to be filed with the board.

(c) On its own motion or the motion of any party, the board may remand the case to an administrative law judge for the purpose of receiving additional evidence or making additional findings of fact.

APPENDIX E

AMENDMENT XIV - CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPORTIONMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT

Materials for the Citizenship and Privileges and Immunities Clauses of Section 1 are set out in this volume. See the following three volumes for materials pertaining to the Due Process and Equal Protection Clauses of that section and Sections 2 to 5.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within it jurisdiction the equal protection of the

laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall

not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

(2)

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1995

BARBARA P. JOHNS,

Petitioner,

vs.

WARE COUNTY BOARD OF COMMISSIONERS, and GAB BUSINESS SERVICES, INC.,

Respondents.

Petition For Writ Of Certiorari To The Superior Court Of Ware County, Georgia

REPLY BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) Whether equal protection is violated by denying benefits to a class of claimants whose psychological injuries are not accompanied by a physical injury while awarding benefits to a class of claimants whose injuries are either physical or who have the same mental impairment but with a physical injury accompanying them.

(2) Whether it is a violation of due process to distinguish between psychological injuries preceded by physical injury or injuries which are purely physical and psychological injuries not preceded by a physical injury.

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OPINIONS AND JUDGMENT BELOW

Within the Appendix A to the Petition for Writ of Certiorari, Petitioner has provided the Order of the Supreme Court of the State of Georgia entered on March 9, 1995. Appendix B contains the Order of the Superior Court of Ware County, Georgia. Within Appendix C to the Petition for Writ of Certiorari, the Petitioner has provided the Award entered by the State Board of Workers' Compensation for the State of Georgia dated December 6, 1994. Petitioner's Appendix D contains the Award entered by the Administrative Law Judge of the State Board of Workers' Compensation for the State of Georgia on July 29, 1994.

STATEMENT OF JURISDICTION

Respondents agree with Petitioner's Statement of Jurisdiction. Jurisdiction is conferred by 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondents agree that this action involves the Fourteenth Amendment to the Constitution of the United States but deny that Petitioner's rights to due process and equal protection have been violated by O.C.G.A. § 34-9-1(4) and O.C.G.A. § 34-9-280.

Although Petitioner cited the above statutes, they were not included in Petitioner's Appendix. Accordingly,

Respondents respectfully submit the following to this Court:

O.C.G.A. § 34-9-1(4)

O.C.G.A. § 34-9-280

STATEMENT OF THE CASE

Petitioner in these proceedings was the Claimant before the Georgia State Board of Workers' Compensation. Petitioner is a 911 operator for Ware County, Georgia. The Ware County Board of Commissioners and GAB Business Services, Inc. are the Respondents herein.

On November 3, 1993, Petitioner filed a claim for workers' compensation benefits for disability benefits and payment of medical benefits as the result of an accident date of September 12, 1993 alleging that she was entitled to benefits as a result of an on-the-job occupational injury resulting solely from stress of the job. The Petitioner admitted that she did not sustain any physical injury on September 12, 1993 while working for the Respondent.

The Administrative Law Judge, relying on a long line of Georgia cases, found that the claim was not compensable since the Petitioner admitted no physical injury. The Petitioner appealed the Award of the Administrative Law Judge to the Full Board of the State Board of Workers' Compensation for the State of Georgia. On July 29, 1994, the Full Board of the State Board of Workers' Compensation for the State of Georgia affirmed the Award of the Administrative Law Judge. The Petitioner then filed an

appeal to the Superior Court of Ware County, State of Georgia. The Superior Court affirmed the decision of the full Board of the State Board of Workers' Compensation. The Petitioner then filed an Application for Discretionary Appeal to the Supreme Court of the State of Georgia. On March 9, 1995, the Supreme Court of the State of Georgia denied the Petitioner's Application for Discretionary Appeal.

The pertinent facts are as follows:

The Petitioner began working for Ware County as a 911 dispatcher in December, 1988, as one of two 911 operators on her shift. (Pet. App. D). During the course of her employment with Ware County, her shift hours varied from working midnights to days. (Pet. App. D). On September 12, 1993, when the Petitioner went to work, she learned that there had been a change in her schedule for the following date. (Pet. App. D). The Petitioner became very upset, contacted her supervisor and immediately left work. (Pet. App. D). The Petitioner did not sustain *any* physical injury on September 12, 1993, or at any time thereafter while working for the Respondents (Pet. App. D).

The following day, the Petitioner went to her personal physician at Waycross Family Practice, complaining of nervousness and stress at the job. (Pet. App. D). The Petitioner was then referred to Satilla Park Hospital, where she was hospitalized from September 13, 1993 through September 18, 1993, with major depression and nervousness. (Pet. App. D). While at Satilla Park, the Petitioner was treated primarily by Dr. Patricia Green, and also engaged in group and individual counselling. (Pet. App. D). The Petitioner was discharged from Satilla

Park Hospital on September 18, 1993 and continued to obtain follow-up care on an out-patient basis with Dr. Green. (Pet. App. D). Dr. Green ultimately released the Petitioner to return to her normal duty work as a 911 operator on October 25, 1993. (Pet. App. D). The Petitioner did return to work on that date, performing her regular duties as a 911 operator and has continued to perform her work without missing any time. (Pet. App. D).

The Petitioner requested a hearing on November 3, 1993 for indemnity benefits from September 12, 1993 through October 26, 1993, the payment of medical bills to Satilla Park Hospital and Dr. Patricia Green, and assessed attorney's fees, alleging "no workers compensation benefits were provided, although it is obvious that this was an on-the-job occupational injury resulting from stress of the job." (Pet. App. D). The Petitioner testified that the constant schedule changes with her job on a last-minute basis caused extreme stress, particularly since she was unable to make any plans or adjust her sleep habits. (Pet. App. D). She admitted that the scheduling aspect of the job caused the most stress and that making quick decisions did not affect her. (Pet. App. D). The Petitioner admitted that she did not sustain any physical injury on September 12, 1993 or while working for the Respondents. (Pet. App. D). Instead, the Petitioner's entire claim is for the payment of benefits and medical expenses relating to a purely psychological injury.

SUMMARY OF THE ARGUMENT

Although Petitioner did not reference Rule 10 of this Court's Rules in her Petition, it appears that review is sought pursuant to Section .1.(b). That is, Petitioner apparently contends that the Georgia Supreme Court "has decided a federal question in a way that conflicts with the decision of another state court of last resort or of a United States Court of Appeals." Specifically, Petitioner asks this Court to grant review of this case in order to determine whether portions of the Georgia Workers' Compensation Act are violative of the Petitioner's Fourteenth Amendment due process and equal protection rights. Petition for Writ of Certiorari, p. 4-5. Petitioner asserts that because some states provide compensation for purely psychological injuries, that Georgia's statutory scheme that distinguishes between employees that sustain a physical injury along with a psychological injury as opposed to a purely psychological injury denies the latter employee due process and equal protection under the laws as provided pursuant to the Fourteenth Amendment to the United States Constitution.

Certiorari should not be granted to the Petitioner because the question she presents is simply not appropriate for appellate review here. In support of her contentions, the Petitioner relies on *Reed v. Reed*, 404 U.S. 71 (1971). However, the Petitioner misconstrues the holding in *Reed*. In *Reed*, this Court reviewed an Idaho statute that gave preference to men over women in considering appointments as administrators of a decedent's estate. The Court noted a classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of

legislation, so that all persons similarly circumstanced shall be treated alike." Citing *Royster Guano Company v. Virginia*, 253 U.S. 412 (1920). 404 U.S. at 76. In *Reed*, this Court found that providing dissimilar treatment for men and women who are thus similarly situated, the challenged section violates the equal protection clause. *Id.* at 77. Obviously, there is no gender-based discrimination shown in the instant petition.

The undisputed facts show that the Georgia Supreme Court properly decided the Petitioner's Fourteenth Amendment claims. The fact that the Georgia legislature has determined that "stress" claims are not compensable under their Workers' Compensation Act, while other states consider "stress" claims to be compensable, does not implicate the Fourteenth Amendment. It is well settled that a presumption of constitutionality attaches to every state statute. There is a strong presumption that a legislature understands and correctly appreciates the needs of its own people, that its laws are directed to problems that may manifest by experience, and that its discriminations are based upon adequate grounds. *Middleton v. Texas Power and Light Company*, 249 U.S. 152 (1919). In *Middleton*, this Court found that the Texas Workers' Compensation Act did not deny equal protection of the laws by excluding from operation of the Act domestic servants, farm laborers, employees of railroad carriers and other specific exemptions within the Act. The instant case is similar in that the Georgia legislature has determined that purely psychological claims are not compensable, but rather a physical injury must occur before a psychological injury can be compensable. This Court has repeatedly upheld the authority of states to establish by

legislation departures from the fellow servant rule and other common law rules effecting the employer's liability for personal injuries to the employee. *New York Central Railroad Company v. White*, 243 U.S. 188 (1916). Clearly, the police power accorded to state legislatures include determinations of which types of injuries can be compensable for the purposes of providing workers' compensation benefits to employees.

Moreover, this Court stated, with regard to social welfare programs, a state "may take one step at a time, addressing itself to the phase of a problem which seems most acute to the legislative mind . . . the legislature may select one phase of one field and apply a remedy there, neglecting the others . . . " *Williamson v. Lee Optical Company*, 348 U.S. 483 (1974).

The Georgia Supreme Court has correctly concluded that the Georgia Workers' Compensation Act did not violate the Petitioner's due process and equal protection rights under the Fourteenth Amendment by denying compensation for her purely psychological injury.

It should also be noted that despite the fact that the Petitioner is attacking the constitutionality of a Georgia statute, the Petitioner has failed to provide notice to the Attorney General of the State of Georgia as required by Rule 29.4.1(c) of this Court's Rules.

ARGUMENT

Rule 10 of the Rules of this Court set forth the basis upon which a Writ of Certiorari may be granted. The Rule reads in pertinent part:

> .1. A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefor. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered . . .
>
> (b) When a state court of last resort has decided a federal question in a way that conflicts with the decision of another state court of last resort or a United States court of appeals.

Supreme Court Rule 10. Respondents have assumed, based on the content of the Petition for Writ of Certiorari, that subsection .1.(b) of Rule 10 is relied upon by Petitioner in support of the instant petition. Petitioner contends that the Georgia Workers' Compensation Act denies Petitioner due process and equal protection under the laws pursuant to the Fourteenth Amendment because she was denied workers' compensation benefits for her purely psychological injury. Respondents will address these contentions separately.

I. EQUAL PROTECTION

It is well settled under Georgia law that in order for a purely psychological injury to be compensable under the Workers' Compensation Act, the psychological injury

must result "naturally and unavoidably" from some discernable physical occurrence. *Hanson Buick, Inc. v. Chatham*, 163 Ga. App. 127, 292 S.E.2d 428 (1982). In *Hanson*, the employee was terminated for poor work performance of his job duties and, as a result, claimed that he suffered psychotic episodes and was disabled. The Court of Appeals, reviewing prior case law and basing its ruling on public policy, reasoned that allowing workers compensation benefits in cases that are purely psychological in nature could render employers helpless in disciplining employees or might cause employers to avoid hiring persons with histories of psychiatric treatment. *Id.* at 430. The Court expressly disallowed recovery of workers compensation benefits for purely psychological injuries. *Id.*

The rule that a "discernable physical occurrence" is a pre-requisite for a claim for mental stress has been continually reinforced by Georgia courts. In *W.W. Fowler Oil Co. v. Hamby*, 192 Ga. App. 422, 385 S.E.2d 106 (1989), the employee was a clerk in a convenience store and, during an armed robbery, a gun was held to her head and she was threatened. The employee argued that the physical touching of the gun to her head qualified as a discernable physical occurrence and, thus, she was entitled to workers compensation benefits resulting from her psychological claim. However, the Court of Appeals did not agree. The Court found that there was no physical injury, and thus, she had no claim to workers compensation benefits for a purely psychological injury. *Id.* at 107.

In the present case, the Petitioner admitted that she did not suffer any physical injury while working for the Respondents on the date of this accident, or any other

time. (Pet. App. D). In addition, the medical records are clear that the Petitioner suffered no physical injury or trauma at any time while employed with the Respondents. (Pet. App. D). The Petitioner, admitting she suffered no physical injury and thus, under the law is not entitled to workers' compensation benefits, asked the Administrative Law Judge, the Full Board of the State Board of Workers' Compensation, the Superior Court of Ware County, the Georgia Supreme Court, and now asks this Court, to overrule a long line of cases clearly setting forth the general rule that claims for purely psychological injuries are *not* compensable.

The Petitioner alleges that her equal protection rights have been violated. What the Petitioner fails to address is the fact that equal protection and its guarantee of equal treatment to all similarly situated, actually *permits* classification which is reasonable and not arbitrary. The equal protection clause does not forbid discrimination with respect to things that are different. The test is whether the difference in treatment is an invidious discrimination. The Petitioner's reliance upon *Reed v. Reed*, 404 U.S. 71 (1971) to support her argument is misplaced. As previously noted, in *Reed*, this Court stated that states have the power to treat different classes of people in different ways, as long as the classification is reasonable, not arbitrary, and rests upon some ground of difference having a fair and substantial relation to the object of the legislation. 404 U.S. at 76.

This Court has held that a state unemployment compensation disability insurance program which does not pay benefits for disability that accompanies normal pregnancy and childbirth does not violate an individual's

equal protection rights. *Geduldig v. Aiello*, 417 U.S. 484, 41 L.Ed.2d 256, 94 S.Ct. 2485 (1974). This Court, citing *Williamson v. Lee Optical Co.*, 348 U.S. 483, 489, stated that, with regard to social welfare programs, a state "may take one step at a time, addressing itself to the phase of a problem which seems most acute to the legislative mind . . . . The legislature may select one phase of one field and apply a remedy there, neglecting the others. . . . "

This opinion, of course, is analogous to the situation at bar. The Georgia legislature has addressed one phase of the problem regarding work-related injuries and determined that purely psychological claims are not compensable, but rather a physical injury must occur before a psychological injury can be compensable. This is most "acute to the legislative mind." The legislature and courts have chosen not to allow the workers' compensation benefits for purely psychological claims and this is not invidious discrimination. Instead, there is a rational reason for this rule. As the Georgia Court of Appeals has held, in *Hanson Buick, Inc. v. Chatham, supra,* to allow compensation for a truly psychological injury without a physical trauma would render employers helpless in disciplining employees or might cause employers to avoid hiring persons with histories of psychiatric treatment. *Hanson Buick, Inc. v. Chatham*, 163 Ga. App. 127, 130 (1982). Thus, there is no violation of the Petitioner's equal protection rights under the Fourteenth Amendment.

II. DUE PROCESS

The Petitioner also alleges that the laws denying workers' compensation benefits for purely psychological

claims and exempting purely psychological claims from the definition of an occupational disease under O.C.G.A. § 34-9-280 violates her due process rights. Again, she provides no support for these contentions. The fact that a statute may, in certain instances, be inequitable, harsh, or even oppressive, does not in and of itself violate the due process clause of the Constitution, provided it operates without discrimination and in a like manner against all persons of a class. *Wickard v. Filburn*, 317 U.S. 111 (1942). The burden is on the one complaining of the due process violation to establish that the legislature has acted in an arbitrary and irrational way. Here, the Petitioner has failed to meet that burden. In fact, the Petitioner offers no support whatsoever for her contention that her due process rights have been violated. There is no discrimination in excluding purely psychological claims. There is a legitimate public purpose, as outlined above, to establish this rule of law.

The Petitioner has also failed to meet her burden of showing that the legislature's exemption of a purely psychological claim from the definition of an occupational disease is discriminatory or arbitrary in nature. O.C.G.A. § 34-9-280(c). The occupational disease statute was incorporated into the Georgia Workers' Compensation Act to protect those employees who are exposed to diseases through prolonged work-related exposure, such as asbestos exposure. The statute specifically delineates conditions and situations which give rise to "occupational diseases" and offers protection to those employees who may not be protected under the Workers' Compensation Act because their injury manifested itself over a prolonged period of time, as opposed to an incident of

trauma. This section of the Workers' Compensation Act deals with exposure to disease, not conditions of life to which the general public is exposed. Anxiety and depression are conditions of life to which the general public is exposed on and off the job. These conditions are not of the nature to be protected by the confines of the occupational disease statute. Thus, the legislature's exemption of purely psychological injuries from the occupational disease statute is not arbitrary or discriminatory and, thus, does not form the basis for an appeal.

The issues raised by the Petitioner have been repeatedly reviewed by Georgia courts and the legislature. Had either body intended for purely stress or psychological injuries to be compensable, the courts have had ample opportunity in the many cases before them to allow it. In addition, the Georgia legislature has revised the Workers' Compensation Act substantially in the last few years, and has again chosen not to include purely stress-related or psychological claims as a compensable injury or an occupational disease. This case offers absolutely no new information or evidence which would allow a circumvention of the general rule and the Petitioner has clearly failed to establish any violation of her constitutional rights.

CONCLUSION

The Petition for Writ of Certiorari should be denied in this matter, because the justiciable concerns required by Rule 10 of the Rules of this Court are not present. There is no need for this Court to decide the broad questions presented by the Petitioner.

Accordingly, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX A

ARTICLE 1

GENERAL PROVISIONS

RESEARCH REFERENCES

A.L.R. – Recovery for discharge from workers' compensation claim, 32 ALR4th employment in retaliation for filing 1221.

34-9-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the State Board of Workers' Compensation.

(2) "Employee" means every person in the service of another under any contract of hire or apprenticeship, written or implied, except a person whose employment is not in the usual course of the trade, business, occupation, or profession of the employer; and, except as otherwise provided in this chapter, minors are included even though working in violation of any child labor law or other similar statute; provided, however, that nothing contained in this chapter shall be construed as repealing or altering any such law or statute. Any reference to any employee who has been injured shall, if the employee dies, include his legal representatives, dependents, and other persons to whom compensation may be payable pursuant to this chapter. All firefighters, law enforcement personnel, and personnel of emergency management or civil defense agencies, emergency medical services, and rescue organizations whose compensation is paid by the state or any county or municipality, regardless of the

method of appointment, and all full-time county employees and employees of elected salaried county officials are specifically included in this definition. There shall also be included within such term any volunteer firefighter of any county or municipality of this state, but only for services rendered in such capacity which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer firefighters; any volunteer law enforcement personnel of any county or municipality of this state who are certified by the Georgia Peace Officer Standards and Training Council, for volunteer law enforcement services rendered in such capacity which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer law enforcement personnel; any person who is a volunteer member or worker of an emergency management or civil defense organization, emergency medical service, or rescue organization, whether governmental or not, of any county or municipality of this state for volunteer services, which are not prohibited by Code Section 38-3-36, rendered in such capacity and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such volunteer members or workers; and any person certified by the Department of Human Resources or the Composite State Board of Medical Examiners and registered with any county or municipality of this state as a medical first responder for any volunteer first

responder services rendered in such capacity, which are not prohibited by Code Section 38-3-36 and only if the governing authority of the county or municipality for which such services are rendered shall provide by appropriate resolution for inclusion of such responders. The various elected county officers and elected members of the governing authority of an individual county shall also be included in this definition, if the governing authority of said county shall provide therefor by appropriate resolution. For the purposes of workers' compensation coverage, employees of county and district health agencies established under Chapter 3 of Title 31 are deemed and shall be considered employees of the State of Georgia. For the purpose of workers' compensation coverage, members of the Georgia National Guard serving on state active duty pursuant to an order by the Governor are deemed and shall be considered to be employees of this state. A person shall be an independent contractor and not an employee if such person has a written contract as an independent contractor and if such person buys a product and resells it, receiving no other compensation, or provides an agricultural service or such person otherwise qualifies as an independent contractor. Notwithstanding the foregoing provisions of this paragraph, any officer of a corporation may elect to be exempt from coverage under this chapter by filing written certification of such election with the insurer or, if there is no insurer, the State Board of Workers' Compensation as provided in Code Section 34-9-2.1 of this article. For purposes of this chapter, an owner-operator as such term is defined in Code Section 40-2-87 shall be deemed to be an independent contractor.

(3) "Employer" shall include the State of Georgia and all departments, instrumentalities, and authorities thereof; each county within the state, including its school district; each independent public school district; any municipal corporation within the state and any political division thereof; any individual, firm, association, or public or private corporation engaged in any business, except as otherwise provide in this chapter, and the receiver or trustee thereof; any electric membership corporation organized under Article 4 of Chapter 3 of Title 46 or other cooperative corporation engaged in rural electrification, including electric refrigeration cooperatives; any telephone cooperative organized under Part 3 of Article 2 of Chapter 5 of Title 46 or other cooperative or nonprofit corporation engaged in furnishing telephone service; the legal representative of a deceased employer using the service of another for pay; and any person who, pursuant to a contract or agreement with an employer, provides workers' compensation benefits to an injured employee, notwithstanding the fact that no common-law master-servant relationship or contract of employment exists between the injured employee and the person providing the benefits. If the employer is insured, this term shall include his insurer as far as applicable.

(4) "Injury" or "personal injury" means only injury by accident arising out of and in the course of the employment and shall not, except as hereinafter provided, include a disease in any form except where it results naturally and unavoidably from the accident. "Injury" and "personal injury" shall not include injury caused by the willful act of a third person directed against an employee for reasons personal to such

employee, nor shall "injury" and "personal injury" include heart disease, heart attack, the failure or occlusion of any of the coronary blood vessels, or thrombosis unless it is shown by a preponderance of competent and credible evidence that any of such conditions were attributable to the performance of the usual work of employment. Alcoholism or disabilities attributable thereto shall not be deemed to be "injury" or "personal injury" by accident arising out of and in the course of the employment. Drug addiction or disabilities resulting therefrom shall not be deemed to be "injury" or "personal injury" by accident arising out of and in the course of employment except when such addiction was caused by the use of drugs or medicines prescribed for the treatment of the initial injury by an authorized physician.

(5) In all cases arising under this chapter, any percentage of disability or bodily loss ratings shall be based upon "Guides to the Evaluation of Permanent Impairment" published by the American Medical Association. (Ga. L. 1920, p. 167, §§ 2, 45; Ga. L. 1922, p. 185, § 1; Code 1933, §§ 114-101, 114-102; Ga. L. 1943, p. 401, § 1; Ga. L. 1946, p. 103; Ga. L. 1950, p. 324, § 1; Ga. L. 1950, p. 404, § 1; Ga. L. 1952, p. 167, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 526, § 1; Ga. L. 1958, p. 183, § 1; Ga. L. 1963, p. 141, § 1; Ga. L. 1964, p. 675, § 1; Ga. L. 1967, p. 633, § 1; Ga. L. 1968, p. 1163, § 1; Ga. L. 1970, p. 196, § 1; Ga. L. 1970, p. 235, § 1; Ga. L. 1973, p. 232, § 1; Ga. L. 1975, p. 190, § 1; Ga. L. 1975, p. 1231, § 1; Ga. L. 1978, p. 2220, § 1; Ga. L. 1980, p. 1145, § 1; Ga. L. 1981, p. 842, § 1; Ga. L. 1981, p. 1585, § 1; Ga. L. 1982, p. 2360, §§ 1, 3; Ga. L. 1982, p. 2485, §§ 0.5, 5.5; Ga. L. 1983, p. 3, § 25; Ga. L. 1984, p. 816, § 1; Ga. L. 1987, p. 1038, § 1; Ga. L. 1987, p. 1110, § 1; Ga. L.

1988, p. 1679, § 0.5; Ga. L. 1990, p. 1501, § 1; Ga. L. 1991, p. 94, § 34; Ga. L. 1991, p. 677, § 1; Ga. L. 1991, p. 1850, § 1; Ga. L. 1992, p. 1942, § 1.)

APPENDIX B

ARTICLE 8

COMPENSATION FOR OCCUPATIONAL DISEASE

PART 1

GENERAL PROVISIONS

34-9-280. Definitions.

As used in this article, the term:

(1) "Disablement" means the event of an employee becoming actually disabled to work, as provided in Code Sections 34-9-261, 34-9-262, and 34-9-263, because of occupational disease.

(2) "Occupational disease" means those diseases which arise out of and in the course of the particular trade, occupation, process, or employment in which the employee is exposed to such disease, provided the employee or the employee's dependents first prove to the satisfaction of the State Board of Workers' Compensation all of the following:

(A) A direct causal connection between the conditions under which the work is performed and the disease;

(B) That the disease followed as a natural incident of exposure by reason of the employment;

(C) That the disease is not of a character to which the employee may have had substantial exposure outside of the employment;

(D) That the disease is not an ordinary disease of life to which the general public is exposed;

(E) That the disease must appear to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence.

For the purposes of this paragraph, partial loss of hearing due to noise shall not be considered an occupational disease. Psychiatric and psychological problems and heart and vascular diseases shall not be considered occupational diseases, except where they arise from a separate occupational disease. (Code 1933, §§ 114-802, 114-803, 114-812, enacted by Ga. L. 1946, p. 103; Ga. L. 1971, p. 895, § 3; Ga. L. 1982, p. 3, § 34; Ga. L. 1982, p. 2485, §§ 4, 5, 8; Ga. L. 1987, p. 1474, § 1.)